

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



JUNE 3, 2013

Enforcement Committee Meeting

California Board of Barbering and Cosmetology
2420 Del Paso Road
1st Floor Sequoia Room, Room 109
Sacramento, CA 95834



Joseph Federico, Industry Member,
President

Wen Ling Cheng, Public Member,
Vice President

Mary Lou Amaro, Industry Member

Bobbie Anderson, Public Member

Andrew Drabkin, Public Member

Richard Hedges, Public Member

Christie Truc Tran, Industry Member

Dr. Kari Williams, Industry Member

Kristy Underwood
Executive Officer

Edmund G. Brown Jr., Governor
State of California

Department of Consumer Affairs
Board of Barbering and Cosmetology

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2420 Del Paso Road, Suite 100
Sacramento, CA 95834

California State Board of Barbering and Cosmetology

Enforcement Committee Meeting Agenda

Monday, June 3, 2013

10:00 A.M. – 12:00 P.M.

Or until completion of business

California Board of Barbering and Cosmetology
2420 Del Paso Road
1st floor Sequoia Room, Room 109
Sacramento, CA 95834

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

1. Welcome and Introductions
2. Election of Committee Chairperson
3. Approval of Enforcement Committee Meeting Minutes
 - January 11, 2013
4. Discussion and Recommendations on Ways the Board Can Prevent Unlicensed Activity
 - Mobile Licensees
5. Discussion of the Option of Offering Remedial Education In Lieu of a Citation and/or Fine
6. Discussion on Lash/Brow Tinting
7. Public Comment

Note: the Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a)]

A quorum of the Board will be present. Meetings of the Board of Barbering and Cosmetology are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue before the Board, but the Chair may apportion available time among those who wish to speak.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting shall make a request no later than five (5) working days before the meeting to the Board by contacting Tami Guess at (916) 575-7144 or sending a written request to that person at the address noted above.

No Attachment



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**CALIFORNIA STATE BOARD OF
 BARBERING AND COSMETOLOGY
 ENFORCEMENT COMMITTEE MEETING**

MINUTES OF JANUARY 11, 2013

**Department of Consumer Affairs
 1625 North Market Blvd.
 Hearing Room S-102, First Floor
 Sacramento, CA 95834**

COMMITTEE MEMBERS PRESENT

Richard Hedges
 Deedee Crossett
 Katie Dawson
 Frank Lloyd (Absent)

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
 Gary Duke, Legal Counsel
 Tandra Guess, Board Analyst

1. Agenda Item #1, WELCOME AND INTRODUCTIONS

Mr. Hedges called the meeting to order at 9:00 a.m.

2. Agenda Item, #2, APPROVAL OF ENFORCEMENT COMMITTEE MEETING MINUTES

Upon motion by Ms. Dawson, seconded by Ms. Crossett, the minutes from the July 16th Enforcement Committee were approved by a 3-0 vote.

3. Agenda Item #3, DISCUSSION AND RECOMMENDATION ON REVISIONS FOR TITLE 16, DIVISION 9, ARTICLES 12 OF THE CALIFORNIA CODE OF REGULATIONS THAT RELATES TO HEALTH AND SAFETY REQUIREMENTS

Mr. Hedges thanked Fred Jones and others from within the industry who have worked to help him get reappointed as a Board member. The Committee has added definitions, added requirements to identify footspas that are out of order or out of service, require that disposable needles be used in electrology, make clear that callus removers and mole removal are invasive procedures, clarify skin peel products are not over 30 percent acid content or with a start up pH of 3.0 or higher.

Ms. Dawson was looking for where the regulations were that addressed how the containers were to be labeled and whether these labels should be visible to the consumers. Mr. Hedges noted everything is supposed to be labeled. The Board requires that if the tools are in a drawer, the drawer is labeled clean or soiled on the outside of the drawer and any boxes or containers that are used have to be labeled. Ms. Dawson commented that her experience has been that instruments are pulled out of a container in a drawer. She as the consumer doesn't see how the container is

labeled. The drawer is not visible and the container is not always removed from the drawer. Mr. Hedges suggested that the consumer needed to ask to see the container. The labels are for the benefit of the consumer, the inspector, and the operator. Ms. Crossett mentioned that the consumer may have to look for the labels.

Ms. Crossett stated the regulations needed to be clear and simple for everybody to understand regardless of the work station. Ms. Dawson stated that she didn't know if it is a requirement that labels be visible to the consumer. It is not a requirement that labels be visible to the consumer. Mr. Hedges stated the consumer has to ask to see the container. Ms. Dawson stated as a consumer she would like to see what the professional is using: unclean, clean, disinfected, contaminated.

Ms. Dawson suggested that the containers be in sight on the table or on the surface where the service is being provided.

Ms. Underwood stated the Board allows a drawer to be a container and the drawers have to be labeled. Carts usually are labeled. Mr. Hedges suggested putting a statement on the website for the consumers that clean and soiled instruments and instrument containers are labeled and if the consumer has a concern, the consumer needs to ask to see the label.

A question was raised as to whether items such as robes, capes, and other coverings could be included under the general category of linen. Mr. Hedges stated linens could be added to the list of coverings. Mr. Hedges believes changing the word from "cabinet" to "container" is very good. Whatever covering is used on a customer, it has to be laundered or stored in a closed container.

A question was asked as to where it says how to label specifically disinfectant. Is labeling disinfectant an OSHA requirement or is that a Board requirement? Ms. Underwood stated it needs to be a EPA registered disinfectant with demonstrated bactericide, fungicidal, and virucidal activity. It must be labeled disinfectant or disinfectant solution. Under 980, disinfecting electrical instruments, (a) clippers, hot styling tools, curling irons, flat irons, hot combs, Ms. Crossett asked if the Board honestly thought that a hairdresser is going to spray down a curling iron? What bacteria is going to live on a flat iron that is over 300 degrees. Nothing is going to live. Mr. Hedges can't answer what the chance of it is. He would feel more comfortable as a consumer with it being disinfected.

Ms. Underwood stated that in the past the requirement has been taken out and reinserted based on suggestions made. Staff agrees with Ms. Crossett. Mr. Hedges asked that it be taken out. Ms. Dawson suggested that it state that debris be removed. The requirement hasn't been something that the Board has ever enforced in its history.

Mr. Jones offered a compromise between Ms. Crossett's and Ms. Dawson's positions that the Board clarify that subparagraph (2) does not apply to the hot instruments. Subparagraph (1) does, removing all foreign debris. It was noted that (a) says shall be disinfected. Ms. Dawson stated that it is not always the case that professionals use their hot tools only on clean hair and that the tools would not be disinfected.

Ms. Dawson was wondering how staff felt about the labeling issue. Staff stated that what is visible to the consumer should be labeled, but consumers are not going to be able to see everything. If a consumer is concerned, then they should ask the operator.

Mr. Hedges stated there was a consensus to remove the hot instruments from Section 980 (a).

Next issue is on pages 6 and 7 under Disposable Foot Tub Liners. There needs to be assurance that this is done properly. Establishments that utilize foot tub liners must maintain a supply of liners for use at all times. Mr. Hedges wants to add an adequate supply and the definition of adequate

means more than one liner per foot tub. That requirement will give some assurance that people won't reuse the liners if they get busy and run out.

Ms. Crossett believes the foot tub liners are a bad idea. Ms. Crossett stated that some salons are reusing nail files, buffers, and toe separators and the cost for those are below \$1.00. The lowest price for a footspa liner Ms. Crossett was able to find is 85 cents. She questioned why the Board would expect salons to not reuse footspa liners when they reuse items that are much less expensive. Ms. Crossett pointed out that use of foot tub liners goes against California's green initiative.

Mr. Hedges is going to let the issue go forward with the amendments, but would like to hear from staff. Ms. Crossett suggested that by sticking to one formula, i.e., one way to disinfect, there is a greater possibility that licensees will follow the requirements and understand what is the appropriate procedure.

Public Comment

Monica Herzog Butler is familiar with liners. She suggested that disinfectant is harmful to the environment and doesn't agree that the liners pose a bigger risk to the planet. Disinfecting the bowls may actually be more expensive for the salon than using liners. She suggested that ten liners per station be on the premises at all times. Salons would also save money on the time used to clean the bowls. Consumers have a better chance of detecting a reused liner than they have with the regular disinfected/non-disinfected foot bowl.

Fred Jones sat on the original task force that was created by the Governor and the Department of Consumer Affairs and actually headed up creating the footspa protocols. He was concerned at the time that the Board was being overly-prescriptive. The issue is biofilm buildup, which is where cross-contamination will occur. Whenever water sits, you can have biofilm buildup. He believes it is incumbent upon regulators to be able to embrace new technology and new trends that are safe. He believes that a plastic liner has much less chance of creating biofilm buildup than a filter in a piped footspa. Ms. Crossett does not agree with him. Mr. Hedges asked the speaker if it was his opinion that the Board couldn't add the word "recyclable." The speaker deferred to Mr. Duke on that topic.

Mr. Hedges urged the Board to adopt this measure.

Mr. Hedges asked if there was agreement with "recyclable" being added.

Ms. Crossett commented on "linens" being added to towels, sheets, robes, smocks. Mr. Hedges agreed to adding the word "linens" in 987 and then following through anywhere that towels, sheets, robes, and smocks are mentioned in the regulations. Ms. Dawson asked if plastic capes are included under 985. If neck strips or towels are used to keep the cape from touching the skin, the cape does not have to be laundered after every use. Ms. Crossett was curious about the change in temperature from 140 to 160. Ms. Guess answered it came from CDC. The "25 minutes" change also came from the CDC.

Mr. Hedges would entertain moving the items forward with a recommendation to the Board to pass them as modified.

Public Comment

Jamie Schrabek of Percision Nails, has an issue with limiting the cleansing agent for hands to something that is alcohol based. She wouldn't want to be so specific. The Board doesn't tell people what specific ingredients their EPA-registered disinfectant has to have. That is up to the EPA to decide what is adequate to have for bactericidal, virucidal, and fungicidal activity.

Mr. Hedges is personally not willing to change it. The alcohol-based is from the CDC.

Ms. Crossett commented on Section 992, skin exfoliation. She feels that (e), mixing or combining skin exfoliation products is prohibited except as required by manufacturer's instructions, is redundant. Mr. Hedges does not have an opinion. Ms. Guess stated that in the past people were using different acid percentages, peels, and mixing them together. This is the reason (e) was added, to prevent "freelancing" by estheticians. Ms. Crossett believes (e) is addressed under (f) which states all skin exfoliation products must be applied using manufacturer's guidelines for health and safety. If you are following manufacturer's guidelines, you shouldn't be mixing.

Ms. Dawson stated that if you say manufacturer's instructions, you're assuming that all the manufacturers of these particular products are up to a certain level as far as what is considered safe and we know that there are some products out there that are not safe.

Mr. Hedges asked if staff had any strong feelings on this issue. Jaime Schrabek of Percision Nails, stated that most of the foot exfoliation products are alkaline, the opposite end of the pH scale, which is just as corrosive and causes chemical burns. Ms. Schrabek suggested that the Board needed to look at the both ends of the spectrum, not just the acidic but the alkaline as well.

Mr. Hedges stated these regulations would go through public comment and several agencies and there will be changes. Ms. Crossett would like to remove (e). Staff agrees with the removal.

Public Comment

Monica Herzog Butler wondered if it was possible to add hair brushes in Section 986. Hair brushes touch the same areas that neck dusters do. Ms. Crossett noted hair brushes were listed under tools and equipment. Ms. Butler believes that people aren't actually disinfecting the hair brushes.

Lydia Justice commented on page 9, Section 987. She would like to see the clothes dryer set at the highest heat cycle for drying towels. Ms. Guess stated there was no health and safety information on this subject and the requirements regarding washing are from CDC.

Clarification was sought on Section 987. If neck strips are being used, it is not required that capes or drapes be laundered between clients. Reference was made to Section 985. Examples should be given of protective covering.

Mr. Hedges asked for comments on a page-by-page basis.

- Page 1: Definition of soiled is dirty. When soiled is mentioned in the regulations, dirty and contaminated are also added. Add contaminated to definition of soiled.
- Page 2: One agreed change on page 2. Under 978.2, add the word "linens."
- Page 3: On 980(a), removing hot styling tools, curling iron, flat iron, and hot combs.
- Page 4: No comments.
- Page 5: No (f). Skips from (e) to (g).
- Page 6: Adding the word "recyclable" to 980.4

- Page 7: Adding an adequate supply to the first sentence of number 4 and definition of adequate means more than one liner per foot tub. (ratio is 5 liners per tub)
- Page 8: Adding to 985 protective coverings “such as client capes.”
- Page 9: “Linens” under 987. 986 (a)(3) and 986 (b)(3) remove “completely.”
- Page 10: Under 989, make first paragraph (a) and change (a) to (b) and (b) to (c). Under 990, remove the word “clean” before closed container and paper needs to be disposed of. Change 990(c) to treatment tables must be covered with either clean treatment table paper, a clean table, or a clean sheet after each use. Add a new sentence that all treatment table paper must be disposed of after a single use.
- Page 11: Remove 992(e).

Mr. Hedges will take the regulations reflecting changes made today to the Board and recommend that the regulations go forward through the process to be adopted by the State of California. Ms. Dawson so moved, seconded by Mr. Hedges, and approved by a vote of 3-0.

4. Agenda Item #4, PUBLIC COMMENT

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125 (a)].

The public present did not wish to address the Committee.

14. Agenda Item #5, ADJOURNMENT

With no further business, the meeting was adjourned.



Agenda Item 4

MEMORANDUM

DATE	May 16, 2013
TO	Board Members Board of Barbering and Cosmetology
FROM	Kristy Underwood Board of Barbering and Cosmetology, Executive Officer
SUBJECT	Unlicensed Activity – Mobile Licensees

The Board has recently received a number of media articles, such as the attached, advertising licensees performing compensated services outside of a Board licensed establishment. This activity is considered unlicensed activity by the Board and subject to disciplinary action.

California Business and Professions code 7317 (b) (1- 3) states the following:

“Except as provided in this article, it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology, or electrolysis for compensation without a valid, unexpired license issued by the board, or in an establishment or mobile unit other than one licensed by the board, or conduct or operate an establishment, or any other place of business in which barbering, cosmetology, or electrolysis is practiced unless licensed under this chapter. Persons licensed under this chapter shall limit their practice and services rendered to the public to only those areas for which they are licensed. Any violation of this section is subject to an administrative fine and may be subject to a misdemeanor.”

The purpose of this memo is to advise the Board that this activity is taking place, and is becoming a work place trend, and to open up discussion on the prevention of unlicensed activity.

Well Manicured

Between juggling family, work and the constant barrage of today's technology, it's no wonder that more and more women need someone to come to *them* for a little pampering. Melanie McCulley, mobile manicurist and owner of Well Manicured, has created a thriving business around this 21st century demand. Her decision to offer portable pampering in the Los Angeles area began 12 years ago, and now her "Mobile Beauty at Your Fingertips" offers the convenience of on-site nail services for business executives, special events, celebrities and for clients unable to leave their homes. "I love [to make] house calls for female executives who don't have time for themselves," she says. "I like the flexibility. ... I make myself available for clients."



5 Reasons Why We Think It's Fabulous

1 Building relationships is key.

McCulley comes from a long line of beauty-driven family members who understand that creating a connection between technician and client is important for repeat business. But for Well Manicured, it's even more critical that McCulley earns clients' trust; after all, they are allowing her into their personal lives—at the office or in their own homes. "[Growing] relationships solidifies my clientele," explains McCulley. And gaining that connection comes fairly naturally, given her professionalism and flawless work.

2 She keeps her skill set sharp.

McCulley has been in the nail business for 14 years, and her ability to create personalized services isn't something you achieve overnight. It's important for her to stay on top of trends, which provided the impetus for her to become an educator for Hand and Nail Harmony. She also prides herself on being trained in every medium, allowing her to cater to all types of client. For instance, McCulley finds that her celebrity clients always

want gel manicures, but she can also do a mean set of acrylics. "I'm a manicurist from the 90s!" she boasts.

3 She has a cutting-edge business sense.

Part of the success of a mobile business is the understanding that a tech must be accommodating. Therefore, McCulley works with flexible business hours that can be adapted to individual client's needs. Part of being flexible also means occasionally thinking outside of the box: McCulley has found that her clients crave a sun-kissed glow, so she has adopted in-home spray tanning as part of her services. Further, McCulley acknowledges that being tech savvy gives her business an added leg up; Well Manicured provides its clients with easy and secure mobile payment options using Paynet Systems, a downloadable smartphone app.

4 Everything used is disposable.

Hygiene, or lack thereof, can make or break a tech's business, especially when working in someone's home. McCulley utilizes tools that can be thrown out or

kept by the client. She also likes to use little paper lunch sacks for her trash, as they are not only cute but also keep things contained for hassle-free cleanup. McCulley brings in all of the supplies to do her job and makes sure that she doesn't leave anything behind except a fabulous set of nails.

5 Believe it or not, there's a big market for mobile services.

"People can't wrap their head around [the fact] that I only do mobile ... [but] there's definitely a need for it in L.A.," says McCulley. From actresses waiting on set between scenes to women at home taking care of their kids, Well Manicured enables the multi-tasking woman to pencil in a manicure while still "doing it all." McCulley's clients love the fact that they can get a quality and safe manicure/pedicure wherever they are, "and they're willing to pay for it," notes McCulley. She particularly loves her evening appointments with busy moms: "The kids go to bed at 7:45 p.m., and she's got her glass of wine and loves it," enthuses McCulley.



Salon Statistics

Year Founded: 2000

Owner: Melanie McCulley

Website: well-manicured.com

Phone: 323.828.1624

Days/Hours: 7 days a week/
hours are flexible

Most Requested Service:


Manicures and pedicures

Signature Service: Gelish gel manicure

Additional Services: On-site spray tanning




PHOTOGRAPHY BY ARMANDO SANCHEZ



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How to Market Your Mobile Salon



With a nail salon seemingly on every corner, finding your niche in the business is imperative to success.

Whether you're starting a new mobile salon business or want to make your current one thrive, look at these tips for making your on-the-go company stand out from the rest.

1) Cater to mommies-to-be. Some soon-to-be-moms are running back and forth between their last weeks of work and baby preparations, others are on bed rest and can't leave the house even if they wanted a manicure for the "big day." Either way, a mobile salon can be the ideal option for these ladies. Make your business unique by advertising the

use of pregnancy-safe polishes like those from Knocked Up Nails or Safe Nails.

2) Talk to moms. As we all know, moms are notoriously busy. Between work, picking up and dropping off their kids, making dinner, and cleaning up vomit from the carpet, it is a wonder any mothers have ever stepped foot inside a salon. Make their lives easier by promoting specials for moms, mother-daughter manicures, and afternoon mom get-togethers. They won't even need to find a babysitter.

3) Find women's events. Whether it's a party, conference, leadership program, beauty company extravaganza, or just a group of women catching up, it's a great opportunity for mobile salons. Not only does a booking at one of these events give you a good day's worth of business, it provides you with the opportunity to connect with many women who could potentially become regular clients. Make your brand memorable by offering nail art pertaining to the company or the occasion.

4) Target beauty media. Start with local newspapers and magazines, online, TV and radio and incrementally work up to more widespread and even national media. Send out press releases every few weeks to make sure your brand is getting out there and staying there. Stay in touch with contacts; they can be incredibly valuable even later on in your career.

5) License your brand and sell it to others. If your mobile salon becomes a success, you can have other manicurists buy in who want to represent your company name in other parts of the state, country, or even the world. This setup allows them to already have a business model and reputation through you, while giving you the opportunity to manage a larger, higher-revenue company. And there's nothing better than making a decent living doing exactly what you love to do. —Sarah Emick

Key Words:

Previous
[WATCH: INM's nail art how-to with gel polish and glitter](#)

Next
[NYFW Fall 2013 Nails: CND Nails at Alexander Wang \(nyfw-](#)



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MEMORANDUM

TO: Members, Enforcement and Inspections Committee **Date:** June 3, 2013
 Board of Barbering and Cosmetology

FROM: Tami Guess, Board Policy Analyst
 Board of Barbering and Cosmetology

SUBJECT: Remedial Education in Lieu of a Citation and/or Fine

To prepare the Enforcement and Inspections Committee to begin discussion on the possibility of offering remedial education in lieu of a fine, staff has conducted the following research on what other State Boards offer and this memo will provide a sampling of what is currently offered, or been tried, by other State Boards.

Arizona

The Board of Arizona has an Infections Control and Safety class that is offered twice, monthly, on site, at their Board. The class fee is \$25.00. The Board requires reciprocity applicants to take the class and the board also uses it for discipline. It is used alone or in addition to a fine. They have found use of the classes as an effective means for the education of repeat offenders and to educate licensee's coming in from other states, on the laws applicable to Arizona.

Kansas

Last year the State of Kansas discontinued their program of remedial training to licensees due to lack of participation and lack of cost effectiveness. The remedial training was offered to licensees with minor violations such as a display of an expired license. It was found that most of their licensee's would rather pay for the fine than actively participate in a class. The training included a seminar on infection control and was part of the States guidance document for discipline to establishments. Below are excerpts of their Guidance document:

Policy – Disciplinary Action for Health/Sanitation Violations Policy Number: 002-12

Last Updated: January 18, 2012

- The purpose of this policy is to provide disciplinary action based on a pattern of excessive health and sanitation violations at an establishment.
- Health and sanitation violations are reviewed on a case-by-case basis. The Board monitors establishments for a pattern of excessive violations before taking disciplinary action against an establishment.

The levels of violations (per inspection) are as follows:

Low Range 1-3 violations Acceptable

Mid Range 4-5 violations Remedial Action Required

High Range > 5 violations Excessive

- Inspections resulting in low range violations are considered an acceptable part of the normal day-to-day operations of an establishment and are merely reported.
- Inspections resulting in mid range violations are of concern to the Board. For all inspections resulting in more than three violations, remedial action is required.
- If an establishment has five or more inspections resulting in violations in the mid range, the Board will issue a Summary Proceeding Order assessing a fine based on the most recent inspection (\$50 per violation) and condition the establishment license for one year.
- If salon has three or more inspections resulting in violations in high range, the Board will issue a Summary Proceeding Order assessing a fine based on the most recent inspection and condition the establishment license for one year.
- The conditions of the license may be as follows:
 1. License is conditioned for one year from the effective date of the order.
 2. All employees/practitioners at the establishment must attend a mandatory infection control seminar. The establishment must contact the Board office within 20 days of the effective date of the order to schedule the seminar with the inspector. The seminar must be held within 60 days of the effective date of the order.
 3. The establishment will be subject to monthly inspections for the conditioned year. The Board will be reimbursed \$50 per inspection (to be paid within thirty days of each inspection).
 4. If the establishment has no more than three infection control violations and no licensure violations reported at the monthly inspections for the first six month period during the one year conditioned period, and have complied with each of the above provisions, and the fine has been paid in full, the conditions on the license will be lifted.
 5. Failure to abide by the conditions set forth by the Board may result in revocation of Respondent's establishment license.

Oregon

Oregon at one time (in 2008 or 2009) had a remedial education program. The remedial education program was offered in-house by an Inspector of their board. The program was done away with for the reasons listed below:

- They did not have statutory right, not to cite and/or fine.
- The program was not effective, as it was not punitive enough; there were no noted reduction on the occurrence of violations.

On May 23, 2013, I received an additional statement saying in effect that their Agency does have the option to extend remedial training and it would depend on the case as presented. In one case, Agency even recommended counseling. So, it appears that in some cases Oregon does still offer a form of their remedial program.

Washington

Washington does not currently have a remedial education program. However, they are in the developmental stages of a program they call the "High Risk Program". If fully implemented the program will consist of the following:

A salon must score above an 85 percent on their salon inspection. Each potential violation is given a scoring weight. If the salon fails two inspections, in a row, they are deemed a 'high risk' salon. They are required to post their inspection report in the salon, viewable to the public. The results of the

inspection can also be viewed on the Boards website. In order to remove the 'high risk' status, the salon must pass a series of inspections and/or participate in remedial education. The remedial education is proposed to be in-person at the Board. Classroom instruction includes education on sanitation and salon safety. Washington has conducted two pilot projects and they both have been met with favorable comments from the public.



Agenda Item 6

MEMORANDUM

DATE	May 16, 2013
TO	Board Members Board of Barbering and Cosmetology
FROM	Kristy Underwood Board of Barbering and Cosmetology, Executive Officer
SUBJECT	Lash/Brow Tinting

The Board has recently received several inquiries on the process for tinting and dyeing lashes and brows. This memo is to inform the Board of the information that was obtained during staff research.

California Business and Professions code 7316 (b) (1- 3) states:

(b) The practice of cosmetology is all or any combination of the following practices:

- (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.*
- (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.*
- (3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.*

California Business and Professions Code 7316 (c) (1) states the following:

(c) Within the practice of cosmetology there exist the specialty branches of skin care and nail care.

(1) Skin care is any one or more of the following practices:

- (A) Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person.*
- (B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.*

The Food and Drug Administration (FDA) maintains that there are no approved dyes (including vegetable dyes) or tints that retain their approval for distribution in the United States. They maintain that if an establishment was to undergo inspection by an FDA

investigator and non-approved product was found on the premises; action would be taken against the establishment.

The FDA has issued an Import Alert. A copy of the import alert, FDA Fact Sheet, email thread and letter received from FDA representatives have been included for your review.

Currently, the procedures on lash/brow tinting can be found in the 11th edition of Milady's Fundamentals Esthetics Textbook – Board approved (page 616-619 and referenced on page 602). In an email dated October 19, 2012 Milady publishing states they have included a Regulatory Agency Alert Box in their publication which states:

Do not use tints with aniline derivatives (coal-tar based). These are not FDA approved and can cause blindness. Some tints are illegal in the United States, but they are still available from retailers for use. Do not use them if they are not legal in your region. You may be fined and lose your license. Permanent haircolor should not be used on brows. Vegetable dyes are allowed in some regions but do not work as well or last as long. Some regions prohibit eyelash and eyebrow tinting using any type of coloring product. Check with local laws and regulations to see what is legal in your area.

In addition, the Board has compiled a listing of which State Boards continue to allow Lash/Brow tinting for your review.

Are your Estheticians allowed to perform lash/brow tinting?				
State	Allows	Does not Allow	Not Regulated	Comments
Alabama	X			
Alaska	X			
Arizona	X			
Arkansas		X		
California		X		
Colorado		X		
Connecticut			X	No Esthetic License offered.
Delaware	X			
District of Columbia	X			
Florida	X			
Georgia	X			print out of Esthetics Curriculum
Hawaii		X		
Idaho	X			
Illinois		X		Board Meeting notes April 26, 2010
Indiana		X		
Iowa	X			
Kansas	X			
Kentucky	X			
Louisiana	X			
Maine	X			
Maryland			X	
Massachusetts		X		States it is prohibited by FDA
Michigan		X		
Minnesota	X			
Mississippi	X			
Missouri	X			
Montana	X			July 25th, 2011 decision
Nebraska		X		

Page 2

State	Allows	Does not Allow	Not Regulated	Comments
Nevada	X			
New Hampshire	X			Peggy called back and stated Esthi's can perform lash tinting as long as the product is made for the eye area. 603-271-3608
New Jersey		X		
New Mexico	X			Cited FDA prohibits
New York		X		
North Carolina	X			
North Dakota	X			
Ohio	X			Recomends the consult with FDA on products.
Oklahoma	X			
Oregon		X		
Pennsylvania	X			
Rhode Island	X			
South Carolina		X		
South Dakota	X			
Tennessee	X			
Texas	X			
Utah		X		
Vermont		X		
Virginia	X			
Washington	X			
West Virginia	X			"The lightening of hair on the body except the scalp."
Wisconsin		X		
Wyoming	X			Print out of General provisions.

*Compiled Sept 2012

Guess, Tandra@DCA

From: Brown, Anna Marie <AnnaMarie.Brown@fda.hhs.gov>
Sent: Friday, November 09, 2012 4:55 AM
To: Guess, Tandra@DCA
Cc: Meyers, Beth; Brown, Anna Marie
Subject: FW: FDA regulation of products intended for eyelash and eye brow tinting

Dear Ms. Guest:

This responds to your inquiry of August 15, 2012, on behalf of the California Board of Barbering and Cosmetology, concerning the status of eyelash and eyebrow dyeing. You questioned whether the FDA advisory with regards to eyelash and eyebrow tinting was still in effect, and whether Mr. Lark Lambert's April 2009 letter on this topic was still valid. We apologize for the delay in responding.

FDA's policy concerning the status of eyelash and eyebrow dyeing cited by Lark Lambert in his June 16, 2009 letter remains in effect. More accurately, this is not a matter of "policy"; it is a matter of the laws enacted by Congress under which FDA regulates cosmetics. FDA regulates cosmetics under the authority of the Federal Food, Drug, and Cosmetic Act (FD&C Act). Under this law, cosmetics must not be adulterated or misbranded. For example, under section 601(a) of the Act, a cosmetic is adulterated if it is harmful for consumers under labeled or customary conditions of use. Under section 601(e) of the Act, a cosmetic is adulterated if it contains a color additive that is "unsafe" under section 721(a), which requires that color additives and their conform with an effective listing.

Presently, there are no color additives approved for tinting the eyelashes or eyebrows. A color additive, as defined by regulation, is any dye, pigment, or other substance (including natural colors, such as vegetable or fruit dyes) that can impart color to a food, drug, or cosmetic, or to the human body. Although cosmetic products and ingredients used in them are not subject to FDA premarket approval, color additives (in any FDA-regulated product) must be used in strict conformance to a listing regulation that authorizes the color additive's use in the specific product type (food, drug, cosmetic, etc.). Coal tar hair dyes (which we believe this product contains) are exempted from the cosmetic adulteration provision of section 601(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act, see <http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticAct/FDCAAct/FDCAActChapterVICosmetics/default.htm>), but only if the cosmetic product's label includes the following legend:

"Caution -- This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing eyelashes or eyebrows; to do so may cause blindness."

However, section 601(a) also stipulates that the term "hair dye" shall not include eyelash dyes or eyebrow dyes, for the purposes of sections 601(a) and (e). For that reason, section 601(e), under which use of an unapproved color additive causes a cosmetic to be adulterated, applies to eyebrow and eyelash dyes, and these products can be considered adulterated cosmetics because they contain a color additive which is unsafe within the meaning of section 721(a).

Finally, FDA has had an Import Alert for eyelash and eyebrow dyes containing coal tar colors in effect since 1982, as a means to intercept, at the time of entry into the U.S., products intended for dyeing eyelashes and eyebrows.

We hope you find this information helpful. Thank you for your concern about the regulatory compliance of the products you import. Please let us know if we can be of further assistance.

Best regards,

Anna-Marie N. Brown
Cosmetics Staff
Office of Cosmetics and Colors



June 16, 2009

Ms. Helen Peveri
Executive Director
Board of Registration of Cosmetology
Division of Professional Licensure
Commonwealth of Massachusetts
239 Causeway Street
Boston, Massachusetts 02114

Dear Ms. Peveri:

This responds to your inquiry of April 27, 2009, on behalf of the Massachusetts Board of Registration of Cosmetology, concerning the status of eyelash and eyebrow dyeing. You presented FDA with five questions concerning this issue:

1. Is the FDA advisory with regards to eyelash/eyebrow tinting still in effect?

There are no color additives approved for dyeing the eyelashes or eyebrows. Cosmetic products marketed in the United States are regulated by the Food and Drug Administration (FDA) in accordance with the requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (<http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCA/default.htm>) and, if offered for sale as consumer commodities, the Fair Packaging and Labeling Act (FPLA) (<http://www.fda.gov/RegulatoryInformation/Legislation/ucm148722.htm>).

Unlike other cosmetic ingredients, all color additives are subject to FDA premarket approval with the exception of coal-tar dyes used to dye the hair. Coal tar hair dyes are exempted from the cosmetic adulteration provision of section 601(a) of the FD&C Act, but only if the cosmetic product's label includes adequate directions for preliminary testing and the following warning:

"Caution -- This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing eyelashes or eyebrows; to do so may cause blindness."

Section 601(a) of the FD&C Act also stipulates that the term "hair dye" does not include eyelash or eyebrow dyes.

Section 601(e) of the Act applies to non hair-dye products. Under this section, eyelash and eyebrow dye products can be considered adulterated if they contain a color additive which is unsafe within the meaning of section 721(a) of the FD&C Act. Section 721(a) requires that all color additives be approved for use and that their use is in conformity with an effective regulation or the cosmetic product containing the color additive will be

adulterated under section 601(e) of the Act. FDA has not approved any color additives for dyeing the eyelashes or eyebrows and therefore no regulations authorize such use.

2. Does the FDA enforce this prohibition? The Board has received information which suggests it may be the only state board enforcing the FDA's ruling and would like to know if the FDA is aware of this.

FDA does enforce the law. Import Alert No. 53-04 (http://www.accessdata.fda.gov/ImportAlerts/ora_import_ia5304.html) has been in place since 1982 as a means to intercept, at the time of entry into the U.S., products intended for dyeing eyelashes and eyebrows. There are several such products on the Import Alert from different countries, and they are automatically detained should they be imported for the U.S. market.

Although cosmetic products and ingredients are subject to regulation and enforcement by FDA, professional practice, such as hair dyeing in salons, generally falls under the jurisdiction of state and local authorities. FDA is unaware of the practices of other state boards of cosmetology regarding eyelash and eyebrow dyeing products.

3. Does the FDA prohibition apply only to metallic dyes or any other specific product or is it a general ban?

As stated above, under the laws and regulations applicable for cosmetics marketed in the U.S., no color additives have been approved for use in dyeing the eyelashes or eyebrows. Non-coal-tar color additives that may be used as hair dyes are listed in Part 73 of the Code of Federal Regulations (CFR) (<http://wcms.fda.gov/FDAgov/ForIndustry/ColorAdditives/GuidanceComplianceRegulatoryInformation/ColorAdditiveListingRegulations/default.htm>) and include bismuth citrate (21 CFR 73.2110), henna (21 CFR 73.2190), and lead acetate (21 CFR 73.2396), (see <http://wcms.fda.gov/FDAgov/Cosmetics/GuidanceComplianceRegulatoryInformation/VoluntaryCosmeticsRegistrationProgramVCRP/OnlineRegistration/ucm109084.htm> for links). The "Uses and restrictions" sections in these regulations state, in part, that these color additives cannot be used for coloring the eyelashes or eyebrows. Color additives listed in Part 74 of the CFR are mostly coal-tar (synthetic organic) color additives (exceptions: D&C Black No. 2 is oil furnace carbon black, and D&C Black No. 3 is bone char), none of which has been approved for use in dyeing the eyelashes or eyebrows and therefore cannot be lawfully used in this manner.

4. The Board has received a claim recently that vegetable based dyes are not permanent and are not included in the FDA ruling, is this accurate?

As stated above, no color additives are approved for use in dyeing the eyelashes or eyebrows. The color additive "vegetable juice," listed under 21 CFR 73.260, is an approved color additive for use in foods (as is fruit juice, 21 CFR 73.250). However, these color additives have not been approved for use in cosmetics.

5. If the FDA ruling is no longer generic but is product specific, could you let us know which product are banned, or if the FDA has stated any particular product (other than mascara, eye shadow, eyebrow pencils and eye liners, of course) are not include in the ban?

Under the laws and regulations applicable for cosmetics marketed in the U.S., there are no color additives approved for dyeing the eyelashes or eyebrows. Products with labeling that makes the claim for dyeing the eyelashes or eyebrows (whether or not they contain color additives approved by FDA for other cosmetic uses), would be considered adulterated under section 601(e) of the FD&C Act.

Sincerely,



Lark A. Lambert
Cosmetics Staff
Office of Cosmetics and Colors
Center for Food Safety
and Applied Nutrition

U.S. Food & Drug Administration

Import Alert 53-04

FDA Home³² Import Program⁴ Import Alerts Imports Alerts by Number Import Alert

(Note: This import alert represents the Agency's current guidance to FDA field personnel regarding the manufacturer (s) and/or products(s) at issue. It does not create or confer any rights for or on any person, and does not operate to bind FDA or the public).

Import Alert # 53-04

Published Date: 03/18/2011

Type: DWPE

Import Alert Name:

"Detention Without Physical Examination of Eyelash and Eyebrow Dyes Containing Coal-Tar"

Reason for Alert:

This alert was initiated in 1982 when it was noted that, upon chemical analysis, a number of eyelash and eyebrow dyes manufactured in Austria, Germany and England, shipped to the U.S., primarily through the mail, contained coal-tar dyes which are unsafe within the meaning of Section 721(a) of the FD&C Act.

The Center for Food Safety and Applied Nutrition, Health Hazard evaluation Board, evaluated the medical evidence related to a consumer injury along with scientific literature for coal-tar dyes. Based on the review, the products listed in the attachment represented an acute, severe hazard to health with the possibility of permanent injury; i.e., impaired sight, including blindness.

The products are believed to be widely distributed in the United States, although they probably are not sold for direct use by consumers, but rather sold to and used in beauty salons. Before use, the products are mixed with hydrogen peroxide and applied by a beautician to the eyelashes with a cotton swab. The primary distributors in the U.S. are likely to be firms that supply goods to beauty salons; however, products may also be shipped directly to beauty salons by the manufacturer.

Review of FY 91-92 detention data indicated detentions of eyelash and eyebrow dyes continue to be made for Dr. Olbrich's Combinational dye, Vienna, Austria; Refecto Cil, Vienna, Austria, and Henna, Berlin, Germany. All entries were mail entries through DET-DO and BUF-DO.

Guidance:

Districts may detain, without physical examination, eyelash and eyebrow dyes identified in the Red List.

Alert U.S. Customs agents of the possible entry of the eyelash and eyebrow dyes at mail facilities. Continue surveillance for coal-tar dyes in eyebrow and eyelash dyes. Notify DIOP if any product not on the attachment is found to contain coal-tar dye.

Product Description:

Eyelash and Eyebrow Dyes

Charge:

"The article is subject to refusal of admission in accordance with Section 801 (a)(3) in that it appears to bear or contain, for the purpose of coloring only, a color additive which is unsafe within the meaning of Section 721(a) [Adulteration, Section 601(e)]."

OASIS charge code - COSM COLOR

List of firms and their products subject to Detention without Physical Examination (DWPE) under this Import Alert (a.k.a. Red List)

AUSTRIA

Andora-Cosmetic
Unknown Street, Vienna, AUSTRIA

Date Published : 09/18/2009

53 C - 07 Eyelash and Eyebrow Dye (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc: Andora -Augenbrauen und Wimpernfarbe all shades

Notes: coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

**Gschwenter-Haar Kosmetick Products
unknown , Vienna, AUSTRIA****Date Published : 09/18/2009**

53 C - - 07 Eyelash and Eyebrow Dye (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Refecto Cil - Augenbrauen und Wimperfarbe graphite; black; brown and blue-black shades

Notes:mfr; coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

W. Pauli**Date Published : 09/18/2009****A-1160 , Vienna, AUSTRIA**

53 C - - 04 Eye Lotion (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Pialan Hair Dye

Notes:mfr; coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

53 C - - 04 Eye Lotion (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Dr Olbrich's Combinall Augenbrauen und Wimperfarbe black; brown; blue; grey shades

Notes:mfr; coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

CANADA**National Beauty Supply****Date Published : 09/18/2009****unknown , Mississagi, Ontario CANADA**

53 C - - 07 Eyelash and Eyebrow Dye (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Dr Olbrich's combinall Augenbrauen und Wimperfarbe black; brown; blue and grey shades

Notes:Known Shipper for W Pauli FEI 3003888792; coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

GERMANY**Else Sperlich Chem. Kosm.****Date Published : 09/18/2009****Fabrick , Berlin, GERMANY**

53 C - - 07 Eyelash and Eyebrow Dye (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Henna Gora Augenbrauen und Wimperfarbe (black; brown; blue-black shades)

Notes:mfr; coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

SWITZERLAND**Anifa SA****Date Published : 09/18/2009****unknown , Baar, SWITZERLAND**

53 C - - 07 Eyelash and Eyebrow Dye (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Belmacil color

Notes:coal tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

UNITED KINGDOM**Zena Cosmetic Co.****Date Published : 09/18/2009****Unknown Street , London, England UNITED KINGDOM**

53 C - - 04 Eye Lotion (Eye Makeup Preparations)

Date Published: 09/18/2009

Desc:Permalash black and brown shades

Notes:mfr coal-tar dyes

Problems: COLOR NOT CONTAINED IN TABLE (ENTER NAME IN REMARKS);

Links on this page:

1. <http://www.addthis.com/bookmark.php?u508=true&v=152&username=fdamain>
2. <http://www.addthis.com/bookmark.php>

3. <http://www.fda.gov/default.htm>
4. <http://www.fda.gov/ForIndustry/ImportProgram/default.htm>

Note: If you need help accessing information in different file formats, see [Instructions for Downloading Viewers and Players](#).

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- [Contact FDA](#)
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U.S. Department of Health & Human Services

Links on this page:

Use Eye Cosmetics Safely



Photodisc

The Food and Drug Administration (FDA) regulates all cosmetics marketed in the United States, including mascara, eye shadows, eye liner, concealers, and eyebrow pencils.

Safety experts within the Office of Cosmetics and Colors in FDA's Center for Food Safety and Applied Nutrition (CFSAN) offer consumers the following advice:

Keep everything clean.

Dangerous bacteria or fungi can grow in some cosmetic products, as well as their containers. Cleanliness can help prevent eye infections.

Always wash your hands before applying eye cosmetics, and be sure that any instrument you place near your eyes is clean. Be especially careful not to contaminate cosmetics by introducing microorganisms. For example, don't lay an eyelash wand on a countertop where it can pick

up bacteria. Keep containers clean, since these may also be a source of contamination.

Don't moisten cosmetic products.

Don't add saliva or water to moisten eye cosmetics. Doing so can introduce bacteria. Problems can arise if you overpower a product's preservative capability.

Don't share or swap.

People can be harmed by others' germs when they share eye makeup. Keep this in mind when you come across "testers" at retail stores. If you do sample cosmetics at a store, be sure to use single-use applicators, such as clean cotton swabs.

Don't apply or remove eye makeup in a moving vehicle.

Any bump or sudden stop can cause injury to your eye with a mascara wand or other applicator.

Check ingredients, including color additives.

As with any cosmetic product sold to consumers, eye cosmetics are required to have an ingredient declaration on the label. If they don't, they are considered misbranded and illegal.

In the United States, the use of color additives is strictly regulated. Some color additives approved for cosmetic use in general are not approved for areas near the eyes.

If the product is properly labeled,

Always wash your hands before applying eye cosmetics, and be sure that any instrument you place near your eyes is clean.

you can check to see whether the color additives declared on the label are in FDA's List of Color Additives Approved for Use in Cosmetics. (Under "For More Information" below, see "Color Additives Approved for Use in Cosmetics" and "FDA's Import Alert for Cosmetics Containing Illegal Colors.")

Use only cosmetics intended for the eyes on the eyes.

Don't use a lip liner as an eye liner, for example. You may expose eyes either to contamination from your mouth or to color additives that are not approved for use near the eyes.

Say "no" to kohl!

Also known as al-kahl, kajal, or surma, kohl is used in some parts of the world for enhancing the appearance of the eyes. But kohl is unapproved for cosmetic use in the United States.

Kohl contains salts of heavy metals such as antimony and lead. Reports have linked the use of kohl to lead poisoning in children.

Some eye cosmetics may be labeled with the word "kohl" only to indicate the shade, not because they contain true kohl.

A product's "ingredient statement" should not list kohl—this is not an FDA-approved color additive. Check the ingredient statement to make sure that kohl is not present.

Don't dye eyelashes and eyebrows.

No color additives are approved by FDA for permanent dyeing or tinting of eyelashes and eyebrows. Permanent eyelash and eyebrow tints and

dyes have been known to cause serious eye injuries.

Use care with false eyelashes or extensions.

False eyelashes and extensions, as well as their adhesives, must meet the safety and labeling requirements for cosmetics. Since the eyelids are delicate, an allergic reaction, irritation, or injury in the eye area can occur. Check the ingredients to make sure you are not allergic to the adhesives.

Don't use eye cosmetics that cause irritation.

Stop using a product immediately if irritation occurs. See a doctor if irritation persists.

Avoid using eye cosmetics if you have an eye infection.

Discard any eye cosmetics you were using when you got the infection. Also, don't use eye cosmetics if the skin around the eye is inflamed.

Don't use old eye cosmetics.

Manufacturers usually recommend discarding mascara two to four months after purchase. Discard dried-up mascara.

Don't store cosmetics at temperatures above 85° F.

Preservatives that keep bacteria or fungi from growing can lose their effectiveness, for example, in cosmetics kept for long periods in hot cars.

REPORT PROBLEMS

If you need to contact FDA concerning an eye cosmetic product problem, go

to the "How to Report" page on FDA's MedWatch Web site at www.fda.gov/medwatch and use form FDA 3500. You can also find contact information for an FDA office near you at www.cfsan.fda.gov/~dms/district.html.

This article appears on FDA's Consumer Health Information Web page (www.fda.gov/consumer), which features the latest updates on FDA-regulated products. Sign up for free e-mail subscriptions at www.fda.gov/consumer/consumerenews.html.

For More Information

Protect Your Health
Joint FDA/WebMD resource
www.webmd.com/fda

CFSAN: Eye Cosmetic Safety
www.cfsan.fda.gov/~dms/coseye2.html

Color Additives Permitted for Use in Cosmetics
www.cfsan.fda.gov/~dms/col-ucrp.html

FDA's Office of Regulatory Affairs (ORA): Import Alert for Cosmetics Containing Illegal Colors
www.fda.gov/ora/fiars/ora_import_ia5306.html

ORA: Import Alert for Eyelash and Eyebrow Dyes Containing Coal Tar
www.fda.gov/ora/fiars/ora_import_ia5304.html

No Attachment